IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 16TH JANUARY 2007 / 26TH PAUSHA 1928

RCRev..No. 471 of 2005-D

RCA.38/2004 of THE RENT CONTROL APPELLATE AUTHORITY (DISTRICT COURT), KOTTAYAM
RCOP.2/2003 of RENT CONTROL COURT (MUNSIFF COURT), ETTUMANOOR
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REVISION PETITIONERS/RESPONDENTSCOUNTER PETITIONERS:
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1. KERALA STATE HANDLOOM WEAVERS' CO-OPERATIVE SOCIETY, 4232, KAITHARAI BHAVAN, P.B.NO.64, THIRUVANANTHAPURAM, REPRESENTED BY ITS PRESIDENT.

2. KERALA STATE HANDLOOM WEAVER'S CO-OPERATIVE SOCIETY LIMITED, HANTEX HOME, KARUGGAPPALLY JUNCTION, ETTUMANNOOR P.O., REPRESENTED BY ITS MANAGER.

BY ADV. SRI.M.K.CHANDRA MOHANDAS

RESPONDENTS: APPELLANT/PETITIONER:

P.L. LUCKOSE, S/O. LUCKOSE, AGED 63 YEARS, PULLUKKALAYIL HOUSE, KANAKKARI KARA AND VILLAGE AND FROM OLLUKKALAYIL IN KIZHAKKUMBHAGAM KARA, ETTUMANNOOR VILAGE, REP. BY POWER OF ATTORNEY HOLDER VINOD V.D., S/O.DIVAKARAN VATTUKALATHIL, KANAKKARI P.O., KOTTAYAM TALUK.

BY ADV. SRI.S.VENKATASUBRAMONIA IYER(SR.)
SRI.ABRAHAM GEORGE JACOB

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 16/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.A.ABDUL GAFOOR &

K.R. UDAYABHANU, JJ.

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R.C.R. NO. 471 OF 2005

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DATED THIS THE 16TH DYA OF JANUARY 2007

O R D E R

Udayabhanu,J.

The revision petitioner is the tenant under orders of eviction as per the order of the appellate authority on the application filed under Section 11(3) of the Kerala Buildings (lease & Rent Control) Act,1965,[Act 2 of 1965] {for short 'the Act'} and reversing the order of the Rent Control Court. The case set up by the landlord in the R.C.P. is that he wanted to re-start the business that he was conducting earlier in vessels. He was earlier running an outlet by name Pullukalayil metal stores in a room adjacent to the petition schedule premises. The above room was owned by his younger brother. Subsequently his sister-in-law, who owned the

above shop room subsequent to the death of his younger brother, initiated proceedings against him vide R.C.P.No. 2/2002 and he vacated the premises as per compromise petition filed on 7-3-2003. He is not in possession of any other vacant building.

2. The contention of the revision petitioner/tenant is that the surrender of possession of the premises in which the landlord was conducting business is the result of collusion and that earlier he had filed R.C.P.No.2/1997 against the another tenant and after contest, obtained vacant possession of the shop room from the above tenant in October 2001. But he did not occupy the same and rented it out on higher rent and hence there is no bona fides at all in the need set up. The landlord has also filed R.C.P.No.7/2001 against the present revision petitioner/tenant, but the same was withdrawn on understanding that the rent will be enhanced to Rs.600/- on 23-7--2002.

3. The appellate authority got convinced from

the explanation of the landlord that R.C.P.No.7/2001 filed against the present revision petitioner was not pressed as his son for whose purposes the eviction was sought obtained employment abroad and also at the time the petitioner/landlord was conducting business in the premises owned by his sister-in-law. The contention stressed by the revision petitioner herein is with respect to the premises that got evicted vide the proceedings in R.C.P.No.2/1997. It is not disputed that the matter was compromised and that the landlord got vacant possession in September 2001. It was pointed out that the landlord/petitioner had concealed the above fact that he has got vacant possession of another premises after instituting the proceedings and thereafter he entrusted the premises to another person without occupying the same by himself. It is pointed out that earlier in R.C.P.No.2/1997, he had sought for eviction on the ground that he wanted to shift his business from that shop. The contention is that the landlord/petitioner

should have placed all these facts in the R.C.R. filed and the very fact that he has not mentioned the details indicated that the need set up is not bona fide.

4. Counsel for the respondent/landlord herein has pointed out that the present contention was not raised before the courts below. It is raised only before this Court. The revision petitioner has filed an affidavit and produced the judgment in R.C.P.No.2/1997 as well as the copy of the order in R.C.A.No.16/2000 and the copy of the compromise petition in the above proceedings. The landlord has filed a counter statement wherein he has explained the reason for the non-occupation of the premises covered by R.C.P.No.2/1997. It is mentioned that at the time there was a dispute between himself and the sister-in-law Smt.Alice Thomas with respect to the family settlement as the premises that he was occupying and conducting business was allotted to his sister-in-law. According to him, the premises in question was purchased by himself and he has paid certain

amounts to his sister-in-law. But subsequently there arose some dispute with respect to the sale consideration. He was under the strong conviction that he is entitled to the above premises and would not be liable to vacate the same. It was at the time the present tenant of the above room one Muhammed Shafi approached him for the premises obtained as per court orders in proceedings of R.C.P.No.2/1997. But subsequently his sister-in-law initiated proceedings against him vide R.C.P.No.2/2002. The matter was compromised due to the interventions of the other family members and he was persuaded to vacate the premises wherein he was conducting Pullukalayil metal stores and the premises was vacated. Therein his sister-in-law is conducting the business under the name and style City Centre dealing with sale of clothes and other textiles. It is also pointed out that CPW1 herein in the present proceedings who is the Manager of the revision petitioner,Society was PW3 in R.C.P.No.2/1997. It is also pertinent to note that in

the counter statement filed by the revision petitioner/respondent in the R.C.P. no contention has been raised with respect to the alleged deliberate non-occupation of the premises got evicted as per the proceedings in R.C.P.No.2/1997 and the allegation that it was given on higher rate of rent. It is also seen from the cross examination of PW1 that the revision petitioner/respondent has not questioned PW1 on this aspect in detail at all. Only the statement of PW1 in the cross examination is that the above room has not been occupied by the landlord himself.

5. In the circumstances, we find that the landlord/petitioner cannot be faulted for non-disclosure of the details which were within the full knowledge of the Manager of the counter petitioner. Evidently in the instant case, there is no basis for the allegation of concealment as CPW1 was fully aware of the details of earlier litigations as he had testified in favour of the landlord in R.C.P.No.2/1997.

6. It is also evident from the proceedings that the petitioner/landlord was a person who was conducting the same type of business for a number of years earlier. Hence, there can be no dispute as to his experience in the field. There is no dispute about his financial ability to invest in the business. It is also evident that he has no other business right now. In the circumstances, we find no reason at all to interfere in the findings of the Rent Control Appellate Authority.

7. Counsel for the revision petitioner/tenant has sought for time for one year to vacate the premises which was strongly opposed by the counsel for the respondent/landlord. In the circumstances and considering the fact that the revision petitioner/tenant is a society, we are inclined to grant six months time from today onwards to vacate the premises on condition that the revision petitioner/tenant shall pay the entire arrears of rent, if any, and also to continue to pay the rent due in future and also file an affidavit before the execution court undertaking that the

revision petitioner shall vacate the premises on or before 16-7-2007. The Rent control revision is disposed of accordingly.

Sd/-

K.A.ABDUL GAFOOR
JUDGE

Sd/-
K.R.UDAYABHANU,
JUDGE

ks.

TRUE COPY

P.S.TO JUDGE